UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mr. Justin L. Radlo
Chief Engineer
Commonwealth of Massachusetts
Executive Office of Transportation
and Construction
Department of Public Works
100 Nashua Street
Boston, MA 02114

Dear Mr. Radlo:

The U.S. EPA, Region I Enforcement Division is in receipt of your draft letter dated October 16, 1981 requesting consideration of Marsh Island as a disposal area for PCB contaminated dredge spoils as governed under 40 C.F.R. §761.10(a)(5).

It is my understanding that the Department of Public Works is seeking guidance in developing this request into an application to the Regional Administrator for an alternative method of disposal utilizing the Marsh Island site, under the provisions of 40 C.F.R. §761.10(a)(5)(iii).

To assist the Department in preparing this application EPA suggests the following approach. First, prior to the development of an application to the Regional Administrator, an adequate sampling program of cores profiling the area to be dredged should be developed. The goal of this plan is to determine the concentrations of PCBs and other possible contaminants in these areas. This plan should be reviewed by EPA prior to implementation to ensure that the results will address the concerns for the design of the ultimate disposal area should one be required.

As provided in section 761.10(a)(5)(iii), the Regional Administrator, in considering a proposed alternative disposal method, must evaluate both the requirements for approved disposal methods in the PCB regulations in Part 761, and "other applicable guidelines, criteria, and regulations to ensure that the discharges of PCBs and other contaminants are adequately controlled to protect the environment." For example, EPA must be concerned with possible discharges of pollutants governed by the Clean Water Act, 33 U.S.C. §1251 et seq., and, in particular, with the possible presence of the toxic pollutants listed in 40 C.F.R. §401.15. Moreover, applicable state statutes, regulations and criteria must be considered as well, including in particular those governing disposal of hazardous wastes. It is therefore important to note that the sampling program may not be limited to PCBs.

SYMBOL			CONCURRENCES				
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Although EPA has only limited information regarding the PCB concentrations of sediments in the proposed dredge area, it may be that these levels fall below the 50 part per million (ppm) regulatory cut-off limit imposed by 40 C.F.R. Part 761.10. Should this be the case, EPA does not foresee a need for the Department to pursue an application for an alternative disposal method. However, if in reviewing the data which results from the sampling program, EPA determines there are significant amounts of PCBs at or greater than 50 ppm, it will be necessary for the Department to pursue the application.

The Department should be aware that the 50 ppm cut-off was overturned by the United States Court of Appeals for the District of Columbia on October 30, 1980, (Environmental Defense Fund, Inc. v. Environmental Protection Agency, No. 79-1580). On April 13, 1981, the Court entered an order staying the effect of its ruling for eighteen months, allowing the 50 ppm cut-off to remain in effect until EPA completes rulemaking proceedings establishing a new cut-off limit. We hope this process will be completed in the coming year.

Quoting from section §761.10(a)(5)(iii), "The application must contain information that, based on technical, environmental, and economic considerations, indicates that disposal in an incinerator or chemical waste landfill is not reasonable and appropriate, and that the alternate disposal method will provide adequate protection to health and the environment." Thus, the Department must first provide the Regional Administrator with information showing the need for an alternate site based on the three factors mentioned.

Secondly, there must be information demonstrating that the alternative disposal method provides a high degree of protection to both health and the environment. Because the proposed Marsh Island disposal site would be a landfill, the criteria against which the degree of protection provided by the proposed disposal method will be measured are those required in 40 C.F.R. §761.41 (Chemical Waste Landfills). Approval of a departure from any of these requirements is a decision which can only be made by the Regional Administrator in the light of all relevant facts. We are not permitted by law to provide a waiver of any requirements in advance of a complete application. We would be willing to provide DPW with as much assistance as possible in the development of its proposed alternative disposal method. However, we have determined, after careful consideration, and extensive discussion of the problems of PCB disposal with EPA Headquarters, other EPA regional offices, and state personnel, that we cannot provide further guidance concerning the requirements of 40 C.F.R. §761.41 until we have more information from your office. In particular, we need to be able to review the information from the sampling programs and, to the extent possible information concerning the cost and feasibility of compliance with the requirements of §761.41.

EPA suggests you contact Richard Chalpin (292-5500) at the Massachusetts Department of Environmental Quality Engineering to determine if their regulations may impact the dredging project and to obtain further technical assistance in preparing the application, and to also contact Ray Francisco (894-2000 Ext. 372) at the Army Corps of Engineers (with who EPA is meeting on this project) to ensure all concerns of these agencies can be addressed simultaneously.

If you have any further questions, please call James Okun, an Engineer on my staff, at 223-2006.

Sincerely yours,

Lawrence M. Goldman
Acting Director
Enforcement Division

cc: Richard Chalpin
Ray Francisco
Greg Prendergast
Thomas McLoughlin

bcc:Steve Ells

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